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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,820	11/16/2001	Darin Prizzi	PRIZZI - 2	8704

32575 7590 10/11/2006

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/993,820

Applicant(s)

PRIZZI, DARIN

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2004 and 17 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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This is a non-final office action for application number 09/993,820, Towel Holder, filed on November 16, 2001.

***Response to Amendment***

The indicated allowability of claim 6 is withdrawn in view of the newly discovered reference(s) to Hassey and Fay. Rejections based on the newly cited reference(s) follow.

***Cancellation of Claims***

Claims 9 and 10 have been canceled per applicant's request.

***Claim Objections***

Claim 1 is objected to because of the following informality: in line 4, "minor" appears to be incorrect and should be --mirror--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, and 6 recites the limitation "said tubular holder" in line 3 of claim 1, in line 4 of claim 2 and in line 3 of claim 6. There is insufficient antecedent basis for this

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limitation in the claim. The original recitation of the limitation is drawn to "a releasable tube holder".

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,653,392 to Hassey et al., hereinafter, Hassey. Hassey discloses in combination a releasable tube holder (20) and a longitudinal support (12) comprising: the tube holder including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (22 and 24) joined together at across a first pair of split edges and separated by a second pair of split edges, each clamping member provided with at least one separated handle member (30) positioned on one of the clamping member halves and opposite another handle member (30) on the other clamping member half, the clamping member halves being hingedly interconnected with a hinge pin (28) connected by a hinge (26) on each clamping member half the first pair of split edges with a torsion spring (34) positioned between the first pair of split edges of the clamping halves to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,126,895 to Leclabart in view of U.S. Patent 2,652,839 to Leclabart, hereinafter, Leclabart '839. Leclabart discloses in combination, a releasable tube holder (Fig. 1) and a longitudinal support (9) comprising: the tube holder including a tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (1 and 2) joined together at across a first pair of split edges and separated by a second pair split edges, each clamping member provided with at least one separated handle member (6) positioned on one of the clamping member halves and opposite another handle member (7) on the other clamping member half, the clamping member halves being identical in cross-section and together forming a cylindrical surface being hingedly connected by a spring member (3) formed between the first pair of split edges to activate opening and closing the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members; and wherein the spring members extends along and in the direction of the one pair of straight across split edges.

Leclabart discloses the claimed invention except for the limitation of the tube holder being plastic and a living hinge. Leclabart '839 teaches a tube holder (Fig. 10) including a circular plastic tube split lengthwise into longitudinally mirror image straight

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halves forming two opposed clamping members joined together at across a first pair of split edges and separated by a second pair of split edges, each clamping member having a handle member (123 and 124), and the clamping member halves being identical in cross-section and together forming a cylindrical surface being hingedly connected by a living hinge formed by a groove between the first pair of split edges to activate opening and closing of the opposed clamping members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tube holder in Leclabart to have been constructed of plastic and to have included the living hinge as taught by Leclabart '839 for the purpose of providing an alternative, mechanically equivalent material for constructing the tube holder based on the material's suitability for the intended use and for providing an alternative, mechanically equivalent means for hingedly attaching the clamping halves to each other.

Claims 1-5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,611,123 to Prizzi in view of Leclabart '839. Prizzi discloses in combination, a releasable tube holder (10) and a longitudinal support (40) comprising: the tube holder including a tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16 and 18) joined together at across a first pair of split edges (20) and separated by a second pair split edges (20), each clamping member provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, the clamping member halves being identical in cross-

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section and together forming a cylindrical surface being hingedly connected by a spring member (28) formed between the handle members to activate opening and closing the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members; wherein the plastic tube has an interior surface (36) which has been serrated; and wherein the support is a beach chair (Col. 3, line 9ff) having a longitudinal top support.

Prizzi discloses the claimed invention except for the limitation of a living hinge and the plastic tube being formed of polypropylene. Leclabart discloses the claimed invention except for the limitation of the tube holder being plastic and a living hinge. Leclabart '839 teaches a tube holder (Fig. 10) including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members joined together at across a first pair of split edges and separated by a second pair of split edges, each clamping member having a handle member (123 and 124), and the clamping member halves being identical in cross-section and together forming a cylindrical surface being hingedly connected by a living hinge formed by a groove between the first pair of split edges to activate opening and closing of the opposed clamping members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tube holder in Prizzi to have included the living hinge as taught by Leclabart '839 for providing an alternative, mechanically equivalent means for hingedly attaching the clamping halves to each other.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of plastic in Prizzi to have been polypropylene for the purpose of providing an alternative, mechanically equivalent material of similar rigidity for constructing the tube holder and since such a modification would not have produced any unexpected results.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi in view of U.S. Patent 2,829,654 to Fay. Prizzi discloses in combination a releasable tube holder (10) and a longitudinal support (40) comprising: the tube holder including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16 and 18) joined together at across a first pair of split edges (20) and separated by a second pair of split edges (20), each clamping member provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member (22) on the other clamping member half, the clamping member halves being hingedly interconnected with coil spring (28) on each clamping member half the first pair of split edges positioned between the handle members to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

Prizzi discloses the claimed invention except for the limitation of the first pair of split edges being hingedly connected by a hinge pin connected by a hinge on each clamping member half with a torsion spring. Fay teaches a tubular holder having



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clamping halves (15 and 16), handle members (17 and 18) on each clamping half, and including a first pair of split edges and a second pair of split edges, wherein a hinge pin (19) connected by a hinge on each clamping member half with a torsion spring (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tube holder in Prizzi to have included the hinge arrangement as taught by Fay for the purpose of providing an alternative, mechanically equivalent means for hingedly attaching the first pair of split edges of the tube holder together to facilitate the activation of opening and closing the second pair of split edges.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent D210,860 to Schellens

U.S. Patent 3,575,182 to Leclabart

U.S. Patent 4,624,272 to Franzino

U.S. Patent 5,960,520 to Conway et al.

U.S. Patent 6,360,752 to Chang


U.S. Patent D488,258 to Walker et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Anita M. King  
Primary Examiner  
Art Unit 3632

September 19, 2006